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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,286	01/27/2004	Steven M. Malachowski	D/A1721D	9173

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EXAMINER

RAGONESE, ANDREA M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,286

Applicant(s)

MALACHOWSKI ET AL.

Examiner

Andrea M. Ragonese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.84(q) due to the use of improper reference character notation. Lead lines are required for each reference character except for those, which indicate the surface or cross section on which they are placed. Such a reference character must be underlined to make it clear that a lead line has not been left out by mistake. However, lead lines and underlining should not both be used with one reference character, as has been done with elements **10** in Figure 1 and **50** in Figure 4.
2. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures.

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3. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because the examiner suggests that on page 1, paragraph [0001], the phrase "2002 by Steven M. Malachowski and Chieh-Min Cheng" should be deleted and the phrase – 2002, now U.S. Patent Number 6,745,493 B2 – should be added therefor to show proper reference to parent application. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1-6** are rejected under 35 U.S.C. 102(b) as being anticipated by Ashizawa (US 3,632,257). Regarding **claims 1** and **4-6**, Ashizawa discloses a particulate dryer with a drying chamber **2**, at least one drying gas inlet **6**, a feed inlet **15** and an exit path through exhaust pipe **16**, as shown in Figure 1.

7. Regarding **claims 2-3**, Examiner notes that Applicant has essentially claimed statements of intended use. Ashizawa discloses an apparatus in which the claimed functional limitations can inherently be performed since the apparatus of Ashizawa utilizes a drying chamber that is capable of producing

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centrifugal forces on the particulate material in order to move the particulate material in a circulating flow of gas (column 2, lines 45-59). These recitations are statements of intended use utilizing functional language, which may not be given patentable weight in apparatus claims. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP § 2114. Therefore, as broadly interpreted by the Examiner, the previously presented rejection is applied to **claims 2-3** based on the prior art of record. See *In re Swinehart*, 169 USPQ 226 (CCPA 1971); *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. **Claims 7-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashizawa (US 3,632,257). Ashizawa teaches an apparatus comprising all limitations recited in **claims 7-14**, but does not expressly disclose the specific values of pressure, velocity or temperature at which the heated drying gas is introduced or the temperature at which the exiting stream is maintained. At the time of the invention was made, these specific variables for controlling the heated drying gas and the exiting stream of particulate material in order to properly drying the particulate material while processing them through the drying apparatus was well known. Therefore, it would have been obvious to one having ordinary skill in the art to introduce the drying gas at these specific values of pressure, velocity and/or temperature as well as maintaining the exiting stream of particulate material at the specific temperature, as Applicant has done, in order to efficiently and effectively dry the particulate material. Moreover, Applicant has not asserted that the specific ranges of values recited provide a particular

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advantage, solve a stated problem or serve a purpose different from that of any other particulate material drying apparatus. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any reasonable values of pressure, temperature and/or velocity because the particulate material would be dried and then discharged from the dryer. Therefore, it would have been obvious to modify the apparatus of Ashizawa by utilizing these particular values of temperature, velocity and pressure because it is well known in the art to process particulate material in such a drying chamber in order to dry the particulate material and discharge the material from the chamber.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **703-306-4055**. The examiner can normally be reached on Monday through Friday from 8 am until 4:30 pm.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR



Mary Bennett
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Group 3700